

**IN THE UNITED STATES BANKRUPTCY
COURT SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,
Debtors,

Chapter 11

Case No. 18-23538 (RDD)
Jointly Administered

SEARS HOLDINGS CORPORATION, *et al.*,
Plaintiffs,

v.

EDWARD SCOTT “EDDIE” LAMPERT, *et al.*,
Defendants.

Adversary Proceeding
Case No. 19-08250 (RDD)

**DECLARATION OF ANNE S. AUFHAUSER IN SUPPORT
OF THE SERITAGE DEFENDANTS’ MOTION TO DISMISS
IN PART THE FIRST AMENDED COMPLAINT**

I, Anne S. Aufhauser, do hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an associate of the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP. My firm represents Defendants Seritage Growth Properties, Seritage Growth Properties, L.P., Seritage KMT Finance LLC, Seritage KMT Mezzanine Finance LLC, Seritage SRC Mezzanine Finance LLC, Seritage KMT Finance LLC, Seritage SRC Finance LLC, Seritage GS Holdings LLC, Seritage SPS Holdings LLC, and Seritage MS Holdings LLC (collectively, the “Seritage Defendants”) in the above-captioned proceedings.

2. I submit this Declaration in support of the Seritage Defendants’ Motion to Dismiss in Part the First Amended Complaint, dated February 21, 2020 (the “Seritage Defendants’ Motion”).

3. I have personal knowledge of the facts stated herein, and I am competent to testify to the matters set forth below.

4. Attached as Exhibit 1 is a true and correct copy of the Sears Holdings Corporation Current Report, filed with the United States Securities & Exchange Commission (the “SEC”) on Form 8-K on November 7, 2014.

5. Attached as Exhibit 2 is a true and correct copy of the Sears Holdings Corporation Current Report, filed with the SEC on Form 8-K on April 1, 2015.

6. Attached as Exhibit 3 is a true and correct copy of the Seritage Growth Properties Registration Statement, filed with the SEC on Form S-11 on April 1, 2015.

7. Attached as Exhibit 4 is a true and correct copy of the Seritage Growth Properties Third Amendment to the Registration Statement, filed with the SEC on Form S-11/A on May 26, 2015.

8. Attached as Exhibit 5 is a true and correct copy of the Subscription, Distribution and Purchase and Sale Agreement between Sears Holdings Corporation and Seritage Growth Properties dated June 8, 2015, filed with the SEC as Exhibit 2.1 to Form S-11/A on June 9, 2015.

9. Attached as Exhibit 6 is a true and correct copy of the Seritage Growth Properties Prospectus, filed with the SEC pursuant to Rule 424(b)(3) on June 10, 2015.

10. Attached as Exhibit 7 is a true and correct copy of the Sears Holdings Corporation Current Report, filed with the SEC on Form 8-K on July 7, 2015.

11. Attached as Exhibit 8 is a true and correct copy of the Stipulation and Agreement of Settlement, Compromise and Release, *In re: Sears Holdings Corp. Stockholder and Derivative Litig.*, No. 11081-VCL (Del. Ch. Feb. 8, 2017).

12. Attached as Exhibit 9 is a true and correct copy of the Seritage Growth Properties Annual Report for the fiscal year ended December 31, 2016, filed with the SEC on Form 10-K on March 1, 2017.

13. Attached as Exhibit 10 is a true and correct copy of the Final Order and Judgment, *In re: Sears Holdings Corp. Stockholder and Derivative Litig.*, No. 11081-VCL (Del. Ch. May 9, 2017).

14. Attached as Exhibit 11 is a true and correct copy of the Order (I) Confirming Modified Second Amended Joint Chapter 11 Plan of Sears Holding Corporation and Its Affiliated Debtors and (II) Granting Related Relief, *In re Sears Holdings Corp., et al.*, No. 18-23538, ECF No. 5370 (Bankr. S.D.N.Y. 2019 Oct. 15, 2019) (the “Confirmation Order”). Exhibit A to the Confirmation Order is the Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors, *In re Sears Holdings Corp., et al.*, No. 18-23538, ECF No. 5370-1 (Bankr. S.D.N.Y. 2019 Oct. 15, 2019).

15. Attached as Exhibit 12 is a true and correct copy of the Seritage Growth Properties Quarterly Report for the period ending September 30, 2019, filed with the SEC on Form 10-Q on November 1, 2019.

16. Each of the abovementioned Exhibits are referred to in the Table of Abbreviations in the memorandum of law in support of the Seritage Defendants’ Motion.

Dated: February 21, 2020

/s/Anne S. Aufhauser
Anne S. Aufhauser
anne.aufhauser@friedfrank.com